

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-6930

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

VERNON A. COLLINS,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Catherine C. Blake, District Judge. (CR-87-338-HAR, CA-02-969-CCB)

Submitted: October 24, 2002

Decided: October 30, 2002

Before WIDENER, MICHAEL, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Vernon A. Collins, Appellant Pro Se. Richard Charles Kay, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Vernon A. Collins seeks to appeal the district court's order denying his petition for a "writ of audita querela" filed under the All Writs Act, 28 U.S.C. § 1651 (2000), which the district court properly construed as a successive motion under 28 U.S.C. § 2255 (2000).^{*} An appeal may not be taken to this court from the final order in a proceeding under 28 U.S.C. § 2255 (2000) unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). When, as here, a district court dismisses a § 2255 motion solely on procedural grounds, a certificate of appealability will not issue unless the movant can demonstrate both "(1) 'that jurists of reason would find it debatable whether the motion states a valid claim of the denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir. 2001) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). We have reviewed the record and conclude for the reasons stated by the district court that Collins has not made the requisite showing. See United States v. Collins, Nos. CR-87-338-HAR; CA-02-969-CCB (D. Md. Apr. 15, 2002). Accordingly, we deny a certificate of

^{*} We conclude that notice under United States v. Emmanuel, 288 F.3d 644 (4th Cir. 2002), was not required because this was not Collins' first § 2255 motion.

appealability and dismiss the appeal. See 28 U.S.C. § 2253(c) (2000). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED